

VZCZCXRO3307
PP RUEHCHI RUEHDT RUEHHM RUEHNH
DE RUEHBK #0933/01 0990709
ZNY CCCCC ZZH
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FM AMEMBASSY BANGKOK
TO RUEHC/SECSTATE WASHDC PRIORITY 6714
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEHBJ/AMEMBASSY BEIJING PRIORITY 6941
RUEHBY/AMEMBASSY CANBERRA PRIORITY 9587
RUEHUL/AMEMBASSY SEOUL PRIORITY 5409
RUEHKO/AMEMBASSY TOKYO PRIORITY 1531
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RUEKJCS/SECDEF WASHINGTON DC PRIORITY
RHHMUNA/CDR USPACOM HONOLULU HI PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 BANGKOK 000933

SIPDIS

STATE FOR EAP, DRL; NSC FOR PHU

E.O. 12958: DECL: 04/07/2019

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SUBJECT: THAILAND'S DEFAMATION LAW -- A TOOL OFTEN USED TO
ATTEMPT TO SILENCE POLITICALLY-MOTIVATED SPEECH

REF: BANGKOK 610 (LESE MAJESTE DEBATE)

BANGKOK 00000933 001.2 OF 003

Classified By: DCM James F. Entwistle, reason 1.4 (b) and (d).

SUMMARY AND COMMENT

1. (SBU) Thailand's criminal defamation law continues to be used by individuals to lash out at political opponents and civil society critics and indirectly hamper free speech, but with varying results in the courts. A rash of recent cases reflects ongoing use by politicians of criminal defamation provisions, but there are fewer cases of sitting government officials filing suits compared to the era of former Prime Minister Thaksin (2001-06), when such actions appeared focused on suppressing anti-government dissent and more directly restricted free speech. Ironically, a defiant Thaksin -- a fugitive abroad after being sentenced to two years' imprisonment on a corruption-related charge -- continues to file defamation suits against critics, even as he denounces the Thai justice system's inability to deliver justice. One recently decided case found in Thaksin's favor; another was dismissed.

2. (C) Comment: While most free speech advocates have focused their attention recently on use of lese majeste (offense to the monarchy) provisions in the criminal code and the 2007 Computer Crime Act, political use of the defamation law has traditionally been a primary concern. The impact of criminal defamation lawsuits on freedom of expression is ultimately hard to quantify, and there is no current effort to try to amend the law. The majority of defamation cases tend to be dropped by the courts or result in the courts ruling in favor of the defendants; in the rare cases where the defendant is found guilty, a prison sentence is brief or suspended. Regardless, those targeted must endure long and expensive court proceedings to exonerate themselves. We will continue to urge an open discussion of the role of criminal defamation in Thai society and whether it should perhaps be abolished. A related debate is whether civil defamation is also used to stifle political opponents and whether the appropriate remedy would be to make claims for compensation proportionate to the harm done. Legal reforms may be necessary to align Thailand's treatment of defamation with

the freedoms of speech and expression already guaranteed in the 2007 Constitution. End Summary and Comment.

THAI DEFAMATION - STILL MAINLY CRIMINAL RATHER THAN CIVIL

13. (SBU) Defamation remains a criminal offense in Thailand under section 328 of the penal code, punishable by a fine of up to \$5,500 (200,000 Baht) and two years' imprisonment. Most human rights activists and proponents of free speech view the law in conflict with unrestricted freedom of expression protected under article 39 in the 2007 Constitution and the spirit of the International Covenant of Civil and Political Rights (ICCPR) to which Thailand is a state party. Some legal experts and rights advocates believed that criminal defamation is unnecessary when civil defamation exists as an alternative; civil defamation cases leave the burden of proof on the complainant, rather than the defendant. While international standards of civil defamation tend to be viewed by courts around the world as limited to protecting a person or legal entity from public ridicule or hatred, and not to stifle legitimate criticism of public figures, corporations or persons, the latter has often been the case in Thailand.

RECENT DEFAMATION CASES (A THAKSIN FLAVOR)

14. (SBU) Defamation cases in Thailand became synonymous with the Thaksin era (2001-06), which a consultant for Human Rights Watch described to us as "the heyday of defamation" suits. Even as a fugitive abroad, former PM Thaksin has continued to utilize the criminal and civil courts to file numerous defamation lawsuits against political opponents at

BANGKOK 00000933 002.2 OF 003

the same time he denounces the Thai justice system's purported inability to deliver justice. Recent rulings in late March have varied; one found in Thaksin's favor, one against.

--On March 25, the Criminal Court handed down several rulings on defamation lawsuits filed by Thaksin while he was still PM in 2006 regarding allegations made at a seminar entitled "The Finland Declaration." The seminar discussed allegations that Thaksin convened a group in Finland prior to becoming PM to discuss his intentions eventually to replace the monarchy and install himself as the ruler of Thailand.

- In the case against Pramote Nakonthap, the Manager Media Group, and three other columnists and administrators of Manager Media after they printed and distributed an article related to the "Finland Declaration" in the Manager Daily newspapers and website for nine consecutive days in 2006, the court found Pramote and Manager Media columnist and publisher Khunthong Roseriwanit guilty of criminal defamation, and sentenced them to one year of imprisonment and a fine of 100,000 Baht, later reducing the sentence to two years' probation. The court acquitted all other defendants. The judge ordered Pramote and Khunthong to print the sentence in five major newspapers for seven days.

--The court separately acquitted Manager Group owner Sonthi Limthongkul, ASTV commentators Chirmsak Pinthong and Chai-Anan Samudavanija, and an additional seven defendants who had participated in the "Finland Declaration" seminar. The court deemed that the defendants had acted in good faith, and in line with then-current academic and media discussion surrounding Thaksin's role as prime minister.

--On March 26, the Criminal Court accepted a criminal defamation case for trial that Thaksin had filed in 2007, after he had been removed from power by a coup, against Sonthi, journalist Sarocha Phon-Udomsak, and the Manager Media Group Company for comments made on an ASTV program and in a news report published in the Manager Daily in 2007.

However, in doing so, the Court dropped the Manager Media Group from the lawsuit and moved the case to arbitration. Thaksin meanwhile initiated a separate defamation lawsuit in the Bangkok Civil Court requesting 2 million baht (\$56,000) from Sonthi and Sarocha.

--On March 27, the Criminal Court accepted a criminal defamation lawsuit filed by Thaksin's lawyers against Foreign Minister Kasit Piromya for a speech Kasit made at a People's Alliance for Democracy (PAD) rally in November 2008. Kasit allegedly stated that Thaksin wanted to return as President of Thailand and aimed to overthrow the monarchy. The lawsuit extended to media outlets ThaiDay.com and ASTV which carried Kasit's speech.

--Most recently on April 6, Thaksin's lawyers filed a criminal defamation complaint with the police against Privy Councilor Pichit Kullavanijaya. The suit targets Pichit for April 3 remarks that Thaksin had attempted to overthrow the monarchy and had laundered huge amounts of money through the Cayman Islands. Thaksin's supporters participating in an ongoing "red-shirt" rally outside Government House the same day called on Pichit to resign for making the remarks.

--On February 13, Thaksin's lawyers filed a criminal defamation lawsuit against Deputy Prime Minister Suthep Thaugsuban for Suthep's accusation that Thaksin's comparison of his situation to that of former South African political prisoner-turned President Nelson Mandela showed that Thaksin wanted to become the President of Thailand. The court accepted the case and scheduled a hearing for May 18.

A TOOL FOR GOVERNMENT OFFICIALS AND PRIVATE CITIZENS ALIKE?

15. (C) One of the most notorious Thaksin-era defamation cases pitted electronic media advocate and co-founder of Thai Netizen Network Supinya Klangnarong against Thaksin's Shin

BANGKOK 00000933 003.2 OF 003

Corp conglomerate. In 2004, Supinya was charged with criminal defamation related to an interview given to the Thai Post newspaper in 2003 in which she linked an increase in Shin Corp profits to company founder Thaksin's ascendancy to the premiership. She faced criminal charges and a civil claim for 400 million Baht (around \$1 million) until the court ruled in her favor. She told us on April 2 that her family had genuinely feared for her life during the Shin Corp defamation trial and remained concerned for her welfare. Supinya commented that since the end of the Thaksin administration, there appeared to be fewer such defamation lawsuits initiated by the government against private citizens, but cases of private citizens filing against other individuals had increased, due to the proliferation of the Internet.

16. (SBU) However, there remain instances in which journalists, politicians, and activists are recipients of defamation lawsuits initiated by government officials. On March 31, the Criminal Court sentenced political activist Chanaphat na Nakhon to three months imprisonment, later reduced to two months, for defaming former Foreign Minister Noppadon Pattama in remarks made in 2007. Chanaphat's remarks linked Noppadon to deforestation in return for financial gains when he served as a deputy minister for natural resources and the environment in the Thaksin era. The court dismissed Noppadon's related claims against seven others, including executives of the Manager Media Group and Thaiday.com, for reporting Chanaphat's allegations.

IMPACT ON FREE SPEECH UNCLEAR - LM A GREATER CONCERN?

17. (C) Ironically, several targets of past defamation charges told us they did not feel the criminal defamation law needed overhaul. Manit Suthaporn, a former judge and now a legal

officer for a private company, commented to us on April 2 that he remained confident that judges usually separated defamation allegations into two groups - "serious offenses and personal persecution" - and that most judges preferred to drop cases they deemed to be products of personal vendettas. For her part, Supinya expressed less concern about the political use of criminal defamation than lese majeste provisions and the 2007 Computer Crime Act to infringe on freedom of expression.

JOHN